

**BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA**

In the Matter of the STAR Certificate  
Invalidation of:

**JON KIM,  
dba KIMS SMOG TEST ONLY,**

Automotive Repair Dealer Reg.  
No. ARD 213745  
Smog Check Station License  
No. RC 213745,

Respondent.

Case No. TC213745

OAH No. 2014080066

**DECISION AFTER REJECTION OF PROPOSED DECISION**

This matter was heard by David Rosenman, Administrative Law Judge with the Office of Administrative Hearings, on December 15, 2014, in Los Angeles, California. Complainant was represented by Tom Rinaldi, Deputy Attorney General. Respondent Jon Kim, dba Kims Smog Test Only was present and was represented by Dale J. Park, Attorney at Law. There was assistance of a Korean interpreter.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on December 15, 2014.

The proposed decision of the Administrative Law Judge was issued on January 13, 2015. After due consideration thereof, the Director declined to adopt said Proposed Decision and thereafter on April 17, 2015, issued an Order of Rejection of Proposed Decision. On May 29, 2015, the Director issued an Order Fixing Date for Submission of Argument. Written argument having been received from both parties, and the time for filing written argument in this matter having expired, and the record, having been read and considered, the Director of the Department of Consumer Affairs pursuant to Section 11517 of the Government Code hereby makes the following decision:

## FACTUAL FINDINGS

1. The Notice of STAR certificate invalidation, dated September 23, 2013, was issued to respondent by an authorized representative of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California. Respondent appealed the invalidation by a request dated December 4, 2013.

2. In 2000, the Bureau issued Automotive Repair Dealer Registration Number ARD 213745 (registration) to respondent, doing business as Kims Smog Test Only. The registration was in full force and effect at all times relevant herein and will expire on November 30, 2015, unless renewed.

3. On February 22, 2001, the Bureau issued Smog Check Test Only Station License Number TC 213745 (station license) to respondent. The station license was in full force and effect at all times relevant herein and will expire on November 30, 2015, unless renewed.

4. On October 19, 2012, the Bureau notified respondent that he was granted a STAR program certificate authorizing his station to inspect and certify "directed vehicles" pursuant to Health and Safety Code section 44010.5, and vehicles identified as gross polluters pursuant to Health and Safety Code section 44014. The notification letter (exhibit 3) added that the Department of Motor Vehicles would be sending notices to consumers with vehicle registration renewals due in January 2013 to have their inspections performed at a STAR-certified station.

5. The facts and circumstances leading to the notice of invalidation occurred on October 13, 2011. Respondent was due in court for a tenant eviction matter and arranged for a licensed smog technician, Charlie Won Yu, to work at the station. Also on October 13, 2011, a Bureau undercover operator drove a 2000 Chrysler Cirrus to respondent's facility and requested a smog inspection. The vehicle's positive crankcase ventilation (PCV) system had been removed by the Bureau. Because the PCV system was a necessary part of the vehicle's smog control system, the vehicle could not pass the visual portion of a smog inspection. Charlie Won Yu performed the smog inspection and issued an electronic Certificate of Compliance for the vehicle. The operator paid \$60 for the smog inspection and received a copy of an invoice and the Vehicle Inspection Report.

6. As a result of these circumstances, the Bureau filed an Accusation against respondent (Bureau Case No. 79/12-161), which was resolved with a Stipulated Settlement and Disciplinary Order (Settlement). Respondent signed the Settlement on February 8, 2013, and the Bureau accepted the Settlement on April 12, 2013. The terms of the Settlement include respondent's admission of the charges in the Accusation, summarized in Factual Finding 5. As charged in the Accusation, respondent admitted to these five legal causes for discipline: (1) making a misleading

statement in violation of Business and Professions Code section 9884.7, subdivision (a)(1); (2) performing acts constituting fraud in violation of Business and Professions Code section 9884.7, subdivision (a)(1); (3) violating the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (a), by performing an inspection that violated Health and Safety Code sections 44012, subdivisions (a) and (f), failing to perform an inspection to determine if emission control devices were present, and section 44015, subdivision (b), by issuing a certificate without a proper inspection; (4) violating Health and Safety Code section 44072.2, subdivision (c), by violating California Code of Regulations, title 16, sections 3340.35, subdivision (c), and 3340.2, by failing to perform the required inspection and issuing a certificate without a proper inspection; and (5) committing an act of dishonesty in violation of Health and Safety Code section 44072.2, subdivision (d).

7. Under the Settlement, respondent's registration and station license were revoked, the revocations were stayed, and the registration and station license were placed on probation for three years under terms and conditions, some of which are summarized below. Also, respondent's Advanced Emission Specialist Technician License was revoked, the revocation was stayed, and the license was placed on probation for one year under the same terms and conditions. The conditions included actual suspensions for five days, requirements for respondent to obey all laws relating to his business and to report to the Bureau the methods used to maintain compliance with probation, a provision allowing random inspections, a requirement that respondent complete a 28-hour Bureau-certified training course, and a requirement that respondent pay to the Bureau its costs of investigation in the amount of \$5,335.06.

8. The Settlement was effective May 2, 2013. Respondent paid the costs to the Bureau. There was no evidence that respondent has violated the probation to which he agreed in the Settlement. Therefore, the probation of his Advanced Emission Specialist Technician License ended May 1, 2014, and, if there are no violations of the probation, the probation of his registration and station license will end May 1, 2016.

9. Respondent had learned about Charlie Won Yu from other station owners. Yu had been doing smog checks for about 25 years and had worked for other stations. Respondent first hired Yu to do smog checks while respondent's license was suspended for 30 days. Yu also worked the day that respondent went to court in October 2011. Respondent has not used Yu to perform smog checks since that event. Respondent assures compliance with the smog inspection laws by performing smog checks himself. He no longer hires other technicians.

10. The history of respondent's other violations of smog check laws, and a summary of the discipline imposed, is taken from the prior Accusation, as admitted by respondent in the Settlement.

a. On July 2, 2002, the Bureau issued Citation No. C03-0009 to respondent against his registration and station licenses, for violations of Health and Safety Code section 44012, subdivision (f), failure to perform a visual/functional check

of emission control devices, and California Code of Regulations, title 16, section 3340.35, subdivision (c), issuing a certificate of compliance to an improperly tested vehicle. Respondent issued a certificate of compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a civil penalty of \$500. Respondent complied with this citation on July 26, 2002. Also on July 2, 2002, related to the same incident, the Bureau issued Citation No. M03-0110 to respondent against his technician license for violations of Health and Safety Code section 44032, qualified technicians shall perform tests of emission control systems and devices in accordance with Code section 44012, and California Code of Regulations, title 16, section 3340.30, subdivision (a), qualified technicians shall inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section 3340.42. Respondent was required to attend an 8-hour training course. Respondent complied with this citation on August 13, 2002.

b. On June 9, 2008, the Bureau issued Citation No. C08-1080 to respondent against his registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f), failure to perform a visual/functional check of emission control devices, and California Code of Regulations, title 16, section 3340.35, subdivision (c), issuing a certificate of compliance to an improperly tested vehicle. Respondent issued a certificate of compliance to a Bureau vehicle with a missing air injection system. The Bureau assessed a civil penalty of \$500. Respondent complied with this citation on July 1, 2008. Also on June 9, 2008, related to the same incident, the Bureau issued Citation No. M08-1081 to respondent against his technician license for violations of Health and Safety Code section 44032, qualified technicians shall perform tests of emission control systems and devices in accordance with Code section 44012, and California Code of Regulations, title 16, section 3340.30, subdivision (a), qualified technicians shall inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section 3340.42. Respondent was required to attend an 8-hour training course. Respondent complied with this citation on July 2, 2008.

c. On October 12, 2010, the Bureau issued Citation No. C2011-0438 to respondent against his registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f), failure to perform a visual/functional check of emission control devices, and California Code of Regulations, title 16, section 3340.35, subdivision (c), issuing a certificate of compliance to an improperly tested vehicle. Respondent issued a certificate of compliance to a Bureau vehicle with a missing fuel evaporative canister. The Bureau assessed a civil penalty of \$1,500. Respondent complied with this citation on October 25, 2010. Also on October 12, 2010, related to the same incident, the Bureau issued Citation No. M2011-0439 to respondent against his technician license for violations of Health and Safety Code section 44032, qualified technicians shall perform tests of emission control systems and devices in accordance with Code section 44012, and California Code of Regulations, title 16, section 3340.30, subdivision (a), qualified technicians shall inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035 and California Code of Regulation section 3340.42. Respondent

was required to attend a 16-hour training course. Respondent complied with this citation on October 27, 2010.

d. On June 29, 2011, the Bureau issued Citation No. C2011-1517 to respondent against his registration and station licenses for violation of Health and Safety Code section 44012, subdivision (f), failure to determine that emission control devices and systems required by State and Federal law are installed and functioning correctly. Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil penalty of \$1,500. Respondent complied with this citation on August 3, 2011. Also on June 29, 2011, related to the same incident, the Bureau issued Citation No. M2011-1518 to respondent against his technician license for violations of Health and Safety Code section 44032, qualified technicians shall perform tests of emission control systems and devices in accordance with Code section 44012. Respondent was required to attend a Basic Clean Air Car Course. Respondent complied with this citation on September 2, 2011.

11. Respondent testified that he tries to comply with the requirements related to smog inspections. As of December 2013, his STAR results for the current quarter all passed program requirements, and he submitted documents indicating the same was true for the three-month periods ending March, June, September and October 2013. (Exhibit C.) Respondent contends that invalidation of his STAR certification is too harsh a result, particularly considering that the incident occurred in October 2011, more than 14 months before the STAR program took effect.

### LEGAL CONCLUSIONS

1. Under California Code of Regulations, title 16, sections 3392.4 and 3392.5, subdivision (b), the STAR program took effect January 1, 2013.

2. Under California Code of Regulations, title 16, section 3392.5.1, subdivision (a)(1), the Bureau may invalidate the certification of a STAR station if "The STAR station, manager, or any licensed technician employed by the station receives an order of suspension, a probationary order, or a citation that is final and non-appealable for violation of any of the following sections: 44012, 44015 (a) and (b), 44015.5, 44016, and 44032 of the Health and Safety Code; and 3340.15 (a), 3340.16 (a) and (b), 3340.16.5 (a) and (b), 3340.17, 3340.30 (a), 3340.35, 3340.41 (b), 3340.41 (c), 3340.42, 3340.42.2, and 3340.45 of Division 33, Title 16, California Code of Regulations."

3. Cause exists to uphold the invalidation of respondent's STAR station certificate under California Code of Regulations, title 16, section 3392.5.1, subdivision (a)(1), in that respondent received a probationary order, effective May 2, 2013, as set forth in Factual Findings 5, 6, 7 and 8, and Legal Conclusion 2.

4. Among the requirements for a station to receive a STAR certification are that it cannot have received a citation, or employ a technician who has received a citation, for certain violations within the year prior to issuance of the certificate, and there can be no license suspensions or probations within the prior three years. (Cal. Code Regs., tit. 16, § 3392.3.1.) After certification, STAR certified stations must continue to meet criteria concerning the absence of citations, suspensions and probations. (Cal. Code Regs., tit. 16, § 3392.4, subd. (a).)

5. Respondent's record of violations of the smog inspection program is troubling. Citations were issued in 2002, 2008, 2010, and 2011. The 2012 Accusation followed, with a Settlement effective May 2, 2013, after the STAR program became effective. The 2002 citations and the 2012 Accusation related to a missing PCV system, and the 2008 and 2010 citations related to other smog systems with missing components. On the other hand, respondent has complied with all of the citations, including payment of fines and extra education. The Settlement included further education and a costs payment over \$5,000, all of which respondent has performed.

6. Respondent's violations and the resulting penalties demonstrate a policy of progressive discipline. Citation penalties increased from \$500 to \$1,500, and education courses increased from eight hours to 16 hours to the Basic Clean Air Car Course. After the last violation in October 2011, an Accusation was filed and the Settlement resulted in license probations including five-day license suspensions, attendance at a 28-hour training course, and costs of over \$5,300. There was no evidence of any further violations by respondent since October 2011. Some of the STAR program requirements focus specifically on the time frame of one year before the program became effective, which would be the year of 2012, as noted in Legal Conclusion 4. There was no evidence of any violations by respondent in 2012. The prior citations were generally resolved within one or two months. By contrast, the incident in the Accusation occurred in October 2011, but the Settlement was not effective until May 2013.

7. Respondent believed that the terms of the Settlement, including the probationary orders, were the appropriate way to resolve the matter and gave up his rights to a hearing and to confront witnesses. At the time of the Settlement, the Bureau also indicated its belief that the terms of the Settlement, including the suspensions and probationary orders, were the appropriate way to resolve the matter.

8. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.* See also, *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

9. The regulations relating to the STAR certification program refer to invalidation, with no other options. The incident leading to the Accusation and resulting in the probation orders occurred in October 2011, which was 14 months before the STAR program took effect. Moreover, Respondent has had no disciplinary actions imposed on his license resulting from any incidents after he received his STAR certification.


10. Under all of the circumstances, a lower level of license discipline is appropriate. Under Business and Professions Code section 495, a licensing agency may publically reprove a licensee "for any act that would constitute grounds to suspend or revoke a license or certificate." The public will be adequately protected by the issuance of a public reproval.

### ORDER

The STAR certificate of respondent Jon Kim, doing business as Kims Smog Test Only, is hereby publicly reproved under the provisions of Business and Professions Code section 495.

This Decision shall become effective on October 24, 2015.

IT IS SO ORDERED this 20th day of August, 2015.

  
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TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs